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June 6, 2005

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VIA ELECTRONIC FILING

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
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Washington, DC 20554

**RE: Ex Parte Communication in a Non-Restricted Proceeding
Petition for Extension of Stay for Rules and Regulations
Implementing the Telephone Consumer Protection Act of 1991
(CG Docket No. 02-278, FCC 03-153)**

Dear Mr. Chairman:

On behalf of the National Association of Home Builders (NAHB) I urge the Federal Communications Commission (FCC) to act as soon as possible to extend the FCC Order of September 15, 2004 in this docket (FCC 04-223). Doing so will stay the effective date of the removal of the "established business relationship" (EBR) from the "Do-not-fax" rules adopted by the FCC in this docket on July 3, 2003. A stay is in order because Congress is acting to establish the EBR by statute, and it would be fruitless and costly for our members to prepare to comply with a regulation that is unlikely to come into effect.

NAHB represents over 220,000 builders, developers, and associated members and firms in approximately 850 affiliated state and local associations in all fifty states, the District of Columbia, and Puerto Rico. The membership includes firms that construct and supply single family homes, apartments, condominiums, and industrial buildings; both manufacturers and installers of modular housing; remodelers and land developers. NAHB members will build approximately 80 percent of the new housing to be built in 2005.

NAHB supports the arguments advanced by the Fax Ban Coalition in its letter to Monica Desai on May 17, 2005 as well as those presented by the Office of Advocacy of the Small Business

In addition, NAHB would like to demonstrate some of the ways America's builders would be affected if the rule were not stayed, and how this would increase the costs of doing business for the industry that has been the engine of America's economic recovery.

The "do-not-fax" rules would affect NAHB itself, its constituent state and local organizations, and the individual members. NAHB is a federation of more than 850 state and local organizations, and NAHB and the member organizations often communicate by fax, some of which will meet the FCC definition of "unsolicited" and "commercial," as NAHB often offers services to members on a fee basis, such as job safety training, economic analysis, and business education. Merely to collect written consents from the state and local organizations would require a substantial investment of time, and hence, money.

NAHB operates the International Builders Show each year, an industrial trade show that attracts over 100,000 business visitors and more than 1,600 exhibitors. Through Builderbooks.com, NAHB sells books and other literature on myriad building topics, often using faxes in the sales or announcements, and NAHB publishes several periodicals—five in print and thirty on line—with a combined circulation over 106,000. To the extent that American Business Media (or its members) also produce trade shows and issue business periodicals, NAHB is in an analogous position, and NAHB supports their comments in the Fax Ban Coalition letter of May 17, 2005. Finally, NAHB staff needs to communicate with the committees and members who participate in the organization and determine its policies.

The state and local building associations are affected just as severely, if not more so. They have thousands of individual members, and the current interpretation would require a signed consent form merely to ask the members to pay their dues. Perhaps even more important, the members cannot communicate about business with each other by fax, even though the firms have published their fax numbers in a directory in order to receive inquiries from other businesses.

It is clear that Congress did not and does not intend to impose these limitations on sensible business communication. Both houses of the 108th Congress passed legislation to put the EBR exception into the statute explicitly, though the year-end rush

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prevented the bill from reaching a Conference Committee. Senate Bill 714 is currently pending before the 109th Congress; it passed its Senate committee unanimously. It is clear that S. 714 will be enacted by this Congress.

However, businesses cannot wait until June 30 to put themselves in a state of compliance with the new rules. They must prepare for the rule in advance, because without a stay, they must be in compliance on July 1.

Businesses must bear all the costs of gathering consents before the deadline. In fact, they need to gather signed consents immediately.

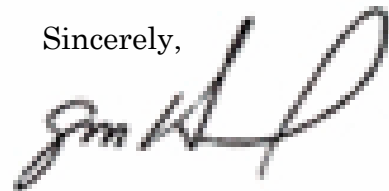
If the Senate Bill is enacted after the "do-not-fax" rules have gone into effect, NAHB, its state and local organizations, and its individual business members will have already incurred the great expense of obtaining signatures from many members, customers, and suppliers in order to comply with a rule that would no longer apply. None of that expense need be incurred if the FCC will stay the "do-not-fax" rules pending Congressional action.

Almost all NAHB builder members are small businesses. Most have fewer than five employees, and many have none at all. Home building is accomplished by sub-contracting, to a very great extent. The time spent to comply with the new fax rules would be a substantial burden on these small businesses; it should not be taken lightly and it should not imposed unnecessarily.

Therefore, Mr. Chairman, NAHB urges you to spare America's builders and their trade associations from the needless expense of substantial paperwork that will soon be unnecessary. Stay this rule until Congress acts.

In case of questions or concerns, please contact the undersigned or our Regulatory Counsel, Andrew Holliday, at 202-266-8305.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gm Howard", written in a cursive style.

Gerald M. Howard
Executive Vice President

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and Chief Executive
Officer

GMH/ajh